

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
REGULAR MEETING
MARCH 28, 2005**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, March 28, 2005 in the City Council Chamber of the Melvin Municipal Office Building, commencing at 2:00 p.m. The following members were present, Ann Buffington, John Cross, Jim Kee, Hugh Holston and Rick Pinto. Bill Ruska, Zoning Administrator and Blair Carr, Esq. from the City Attorney's Office were also present.

WELCOME

Chair Hugh Holston welcomed everyone to the March meeting of the Greensboro Board of Adjustment. He explained the procedures of the Board and the procedures of appealing any ruling made by the Board.

APPROVAL OF MINUTES OF LAST MEETING

Mr. Cross moved approval of the February 28, 2005 minutes as written, seconded by Mr. Pinto. The Board voted 5-0 in favor of the motion. (Ayes: Buffington, Cross, Holston, Kee and Pinto, Nays: None.)

Mr. Ruska was sworn in for all testimony to be given at the meeting. In response to a question by Chair Holston, Mr. Ruska stated that BOA-05-14, 920 N. Church Street should be withdrawn at the request of the applicant; BOA-05-13 1201 W. Meadowview Road should be continued because of an error in the advertisement; BOA-05-10, 1201 Union Street and BOA-05-11, 810 Lexington Street should be continued to the June meeting. Actions on these items are listed below.

OLD BUSINESS

VARIANCE

- (A) BOA-05-05: 4007 DONEGAL DRIVE MICHAEL AND SANDRA HORLICK REQUEST VARIANCES FROM TWO MINIMUM SIDE SETBACK REQUIREMENTS. THIS CASE WAS CONTINUED FROM THE JANUARY 24, AND FEBRUARY 28, 2005 MEETINGS. VIOLATION #1: AN EXISTING CARPORT, WHICH HAS BEEN ATTACHED ONTO THE EASTERN SIDE OF THE HOUSE, ENCROACHES 3.85 FEET INTO A 5-FOOT SIDE SETBACK. TABLE 30-4-61. VIOLATION #2: AN EXISTING STORAGE SHED, WHICH HAS BEEN CONSTRUCTED ONTO THE WESTERN SIDE OF THE HOUSE, ENCROACHES 3.3 FEET INTO A 5-FOOT SIDE SETBACK TABLE 30-4-6-1. PRESENT ZONING-RS-9, BS-153, CROSS STREET-REHOBETH CHURCH ROAD. (CONTINUED TO APRIL 2005 MEETING)**

Ms. Horlick, the applicant, was sworn in and stated that she would like this item continued to the April meeting since her husband was unable to attend the hearing.

Mr. Pinto moved that BOA-05-05 be continued to the April meeting, seconded by Mr. Kee. The Board voted 5-0 in favor of the motion. (Ayes: Buffington, Cross, Holston, Kee and Pinto, Nays: None.)

- (B) BOA-05-06: 702 WAYCROSS DRIVE NORMAN AND LAURIE REGAL REQUEST A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT. THIS CASE WAS CONTINUED FROM THE JANUARY 24, AND FEBRUARY 28, 2005 MEETINGS. VIOLATION:**

A PROPOSED ATTACHED GARAGE/ADDITION WILL ENCROACH 6 FEET INTO A 10-FOOT SIDE SETBACK. TABLE 30-4-6-1, PRESENT ZONING-RS-15, BS-78, CROSS STREET- MONMOUTH DRIVE. (GRANTED)

Mr. Ruska stated that Norman and Laurie Regal are the owners of a parcel located at 702 Waycross Drive. This case was continued from the January 24, and February 28, 2005 meetings. The lot is located on the southern terminus of Waycross Drive adjacent to the Starmount Golf Course on zoning map block sheet 78 and is zoned RS-15. The lot contains a single-family dwelling. The applicant is proposing to construct a garage/storage addition to the side of the dwelling. The attached addition will encroach 6 feet into a 10-foot side setback requirement. There is a 10-foot utility easement along this side property line. The applicant applied for an easement release. At their March 16, 2005 meeting, the Planning Board approved an easement release request for six (6) feet of the 10-foot easement. The addition encroachment is adjacent to Starmount Golf Course. The proposed garage will be approximately 24 feet wide by 24 feet deep and will contain 576 square feet. The storage area will contain approximately 64 square feet. The applicant is proposing to remodel the existing garage to create habitable space consisting of a mud room, laundry area, and accessory use office space. The applicant has made mention in his application that the lot topography is unique to his property. The adjacent properties are also zoned RS-15.

Marc Isaacson, attorney representing the applicant, was sworn in and presented handouts and photographs. He reported that one of the main reasons for the request is because the current garage floods during rainy weather, there is a lot of erosion on this portion of the property. An architect for the applicant has indicated that if the run-off pattern is changed that should alleviate the flooding problem. Easement releases have been obtained for the proposed variance and a letter from Starmount Country Club has been obtained indicating their approval of the proposed project.

Chair Holston asked if there was anyone present wishing to speak in opposition to the request and no one came forward.

After some discussion Mr. Cross moved to incorporate the stated findings of fact and that the Zoning Enforcement Officer be overruled and the variance granted based on the following: there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of this ordinance. If the applicant complies with the provisions of the ordinance he or she can make no reasonable use of this property because due to the current state of flooding at the house it is reasonable to expect continued deterioration of the house. The hardship of which the applicant complains results from unique circumstances related to the property. The hardship results from the application of this ordinance to this property because it is reasonable to expect the homeowners to correct the problem with the best solution possible. The hardship is not the result of the applicant's own actions, the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because of the uniquely slanted property line of the property on the east side, the granting of the variance preserves the public safety and welfare and does substantial justice because without the variance the property owner would not be able to construct the addition to the house which has been shown to be the best option available to them to solve the run-off problem, seconded by Mr. Pinto. The Board voted 5-0 in favor of the motion. (Ayes: Buffington, Cross, Holston, Kee and Pinto, Nays: None.)

(C) BOA-05-07: 2700 BATTLEGROUND AVENUE R.G. VENTURES INC., REQUESTS A VARIANCE FROM THE MINIMUM STREET SETBACK REQUIREMENT. THIS CASE WAS CONTINUED FROM THE FEBRUARY 28, 2005 MEETING. VIOLATION: AN EXISTING CANOPY ENCROACHES 14 FEET INTO A 15 FOOT STREET SETBACK ADJACENT TO MARTINSVILLE ROAD. TABLE 30-4-6-5, PRESENT ZONING-GB, BS-51, CROSS STREET- MARTINSVILLE ROAD. (CONDITIONALLY GRANTED)

Mr. Ruska stated that R. G. Ventures, Inc. is the owner of the property located at 2700 Battleground Avenue. This case was continued from the February 28, 2005 meeting. The property is located on the eastern side of Battleground Avenue at the Martinsville Court intersection on zoning map block sheet 51 and is zoned GB. The applicant is requesting a variance to allow an existing canopy to encroach 14 feet into a 15-foot setback adjacent to Martinsville Court. The applicant was granted a conditional variance at the March 28, 1993 BOA meeting for a gasoline canopy encroachment. The current request is for another canopy/structure that was added to the building in November 2004. The encroachment was discovered by the City Building Inspector. On December 1, 2004, the applicant was instructed to obtain a building permit for the structure. The zoning office could not approve a building permit because the canopy does not meet the minimum GB zoning setback requirement. The lot is a unique triangular shape and has two street setbacks. Battleground Avenue is classified as a major thoroughfare and Martinsville Court is classified as a collector street. If the variance is granted, the applicant will need to submit a site plan for the review process. Development standards including required parking spaces, the travel flow and design of the parking lot will have to be approved by the Planning and GDOT Departments. The adjacent property located to the north is also zoned GB, the adjacent property on the western side of Battleground Avenue is zoned GB and HB, and the property located on the western side of Martinsville Court is zoned GB and LI.

Patrick Downs, attorney representing the applicant, was sworn in and stated that the applicant has operated a gas/service station at this location for many years. They now wish to expand their business to include the installation of mufflers for their clients. A canopy structure has been installed on the property and has been found to encroach in the street setback. The street to the rear, Martinsville Court, is very seldom used for traffic going toward Battleground Avenue and is almost considered an "alleyway". Delivery trucks use this street and occasionally park trucks on the side of the road while making their deliveries and there has been no problem with northeast traffic flow.

Chair Holston asked if there was anyone present wishing to speak in opposition to the request and no one came forward.

Ms. Buffington moved to incorporate the stated findings of fact and that the Zoning Enforcement Officer be overruled and the variance granted based on the following with the stipulation that the canopy area cannot be enclosed and if Martinsville Court is widened, the applicant will be financially responsible for removal of the canopy and will not receive compensation for its relocation or removal;; if the applicant complies with the provisions of the ordinance he or she can make no reasonable use of this property, the hardship of which the applicant complains results from unique circumstances related to the property, the hardship results from the application of this ordinance to this property because she feels it would be difficult for the property owner to expand his business, the hardship is not the result of the applicant's own actions, the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the shape of the lot and its location make it difficult to expand the business, the granting of the variance preserves the public safety and welfare and does substantial justice because it is felt that if the canopy is not enclosed it would not impede the sight distance of the lot, seconded by Mr. Kee. The Board voted 4-1 in favor of the motion. (Ayes: Buffington, Cross, Holston, Kee. Nays: Pinto.)

(D) BOA-05-08: 5601 GUIDA DRIVE DONNA WILLIAMS REQUESTS A VARIANCE FROM THE MAXIMUM FENCE HEIGHT REQUIREMENT. THIS CASE WAS CONTINUED FROM THE FEBRUARY 28, 2005 MEETING. VIOLATION: AN EXISTING PRIVACY FENCE EXCEEDS THE MAXIMUM HEIGHT OF 4 FEET BY 2 FEET WITHIN 15 FEET OF THE DOLLEY MADISON ROAD RIGHT-OF-WAY. SECTION 30-4-9.6(A), PRESENT ZONING-RS-12, BS-164, CROSS STREET- DOLLEY MADISON ROAD. (DENIED)

Mr. Ruska stated that Donna Williams is the owner of the lot located at 5601 Guida Drive. This case was continued from the February 28, 2005 meeting. The lot is located at the southwest intersection of Guida Drive and Dolley Madison Road on zoning map block sheet 164. The lot contains a single-family dwelling. The applicant has installed a privacy fence that exceeds the maximum height of 4 feet by 2 feet within 15 feet of the Dolley Madison Road right-of-way. Zoning Enforcement received a complaint from a citizen that the new owner had constructed a fence that was too tall. On December 30, 2004, the property owner was issued a Notice of Violation. Upon receipt of the Notice of Violation, the applicant contacted the zoning office and began her variance procedures. The lot is a corner lot. The applicant has stated that the additional height is needed to provide adequate privacy. In reference to Section 30-4-9.6(E)1) Measurements: " Fence height shall be measured at the highest point, not including columns or posts, of the fence section as measured from the grade on the side nearest the abutting property or street." The nearest portion of the fence is approximately 3 feet from the property line adjacent to the Dolley Madison Road right-of-way. This side property line is approximately 140 feet in length. The applicant has kept the fence at least 70 feet from the intersection. There is no problem with visibility or sight distance interference. The lot is currently zoned RS-12. The adjacent properties are also zoned RS-12.

Donna Williams, the property owner, was sworn in and stated that she just recently moved into the house on this property and installed a fence for privacy, to reduce noise pollution and for safety reasons. She has already moved the fence one time in an effort to comply with the restrictions and setbacks on the property. She presented a notarized letter from the adjacent property owner which states they are not opposed to the current placement of the fence. She also presented photographs showing placement of the fence on the property. She would not want to incur more expense by having to move the fence again.

Chair Holston asked if there was anyone present wishing to speak in opposition to the request and no one came forward.

Mr. Pinto moved to incorporate the stated findings of fact and that the Zoning Enforcement Officer be upheld and the variance denied based on the following: if the applicant complies with the provisions of the ordinance he or she can continue to make reasonable use of this property, there are no hardships which result from unique circumstances related to the property because the problem exists because of the actions of the property owner, the hardship is the result of the applicant's own actions, the variance is not in harmony with the general purpose and intent of the ordinance and does not preserve its spirit because a lower fence could have been installed, seconded by Mr. Cross. The Board voted 2-3 in favor of the motion. (Ayes: Cross, Pinto. Nays: Buffington, Holston and Kee.)

Counsel Carr stated that the motion would have to be restated in the affirmative for a final vote.

Ms. Buffington moved to incorporate the stated findings of fact and that the Zoning Enforcement Officer be overruled and the variance granted based on the following: if the applicant complies with the provisions of the ordinance he or she can make no reasonable use of this property, the hardship of which the applicant complains results from unique circumstances related to the property, the hardship results from the application of this ordinance to this property because the rule does not accomplish the applicant's privacy and security from a very busy road, the hardship is not the result of the applicant's own actions as she was willing to move the fence back, the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the placement of the fence is for security and privacy, the granting of the variance preserves the public safety and welfare and does substantial justice, seconded by Mr. Kee. The Board voted 3-2 and the motion was denied. (Ayes: Buffington, Holston, Kee. Nays: Cross and Pinto.)

Mr. Ruska stated the motion fails because there has to be 4 affirmative votes to overturn the Zoning Enforcement Officer.

- (E) BOA-05-10: 1013 UNION STREET BULENT BEDIZ REQUESTS A VARIANCE FROM THE MINIMUM REAR SETBACK REQUIREMENT. THIS CASE WAS CONTINUED FROM THE FEBRUARY 28, 2005 MEETING. VIOLATION: A PROPOSED ADDITION WILL ENCROACH 0.5 FEET INTO A 20-FOOT REAR SETBACK. TABLE 30-4-6-1, PRESENT ZONING-RM-12, BS-7, CROSS STREET- LEXINGTON AVENUE. (CONTINUED TO APRIL MEETING)
- (F) BOA-05-11: 810 LEXINGTON AVENUE BULENT BEDIZ REQUESTS A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT. THIS CASE WAS CONTINUED FROM THE FEBRUARY 28, 2005 MEETING. VIOLATION: A PROPOSED ADDITION WILL ENCROACH 3.5 FEET INTO A 5-FOOT SIDE SETBACK. TABLE 30-4-6-1, PRESENT ZONING-RM-12, BS-7, CROSS STREET-UNION STREET. (CONTINUED TO APRIL MEETING)

Bulent Bediz, the property owner stated that he wished to continue these items to the June 27, 2005 meeting.

Mr. Cross moved to continue the two items to the June meeting, seconded by Ms. Buffington. The Board voted 5-0 in favor of the motion. (Ayes: Buffington, Cross, Holston, Kee and Pinto, Nays: None.)

NEW BUSINESS

VARIANCE

- (A) BOA-05-13: 1202 WEST MEADOWVIEW ROAD WILEY SYKES, III REQUESTS VARIANCES FROM THE MINIMUM REAR SETBACK REQUIREMENT AND FROM A MINOR THOROUGHFARE SETBACK REQUIREMENT. VIOLATION #1: A PROPOSED SINGLE FAMILY DWELLING WILL ENCROACH 5 FEET INTO A REQUIRED 20-FOOT REAR SETBACK. TABLE 30-4-6-1. VIOLATION #2: THE DWELLING WILL ALSO ENCROACH 15 FEET INTO A 40-FOOT MINOR THOROUGHFARE SETBACK (WEST MEADOWVIEW ROAD). PRESENT ZONING-RS-9, BS-41, CROSS STREET - COLISEUM DRIVE. (CONTINUE TO APRIL MEETING)

Mr. Pinto moved to continue this item, seconded by Mr. Kee. The Board voted 5-0 in favor of the motion. (Ayes: Buffington, Cross, Holston, Kee and Pinto, Nays: None.)

- (B) BOA-05-14: 920 NORTH CHURCH STREET KOTIS PROPERTIES REQUESTS A VARIANCE FROM THE SPECIAL SETBACK FROM A THOROUGHFARE. VIOLATION: A PROPOSED COMMERCIAL BUILDING WILL ENCROACH 16.5 FEET INTO A 100-FOOT CENTERLINE SETBACK FROM EAST WENDOVER AVENUE. THIS WILL RESULT IN THE BUILDING BEING 23.5 FEET FROM THE PROPERTY LINE/EAST WENDOVER AVENUE RIGHT-OF-WAY LINE. SECTION 30-4-7.3(X)(1), PRESENT ZONING-GB, BS-11, CROSS STREET- EAST WENDOVER AVENUE. (WITHDRAWN)

Mr. Cross moved to withdraw this item, seconded by Ms. Buffington. The Board voted 5-0 in favor of the motion. (Ayes: Buffington, Cross, Holston, Kee and Pinto, Nays: None.)

SPECIAL EXCEPTION**(A) BOA-05-15: 2 WOODLEA RIDGE COURT DEBORAH KING REQUESTS A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-5-2.37(B) TO ALLOW A SEPARATION OF 1,098 FEET FROM ONE FAMILY CARE HOME (6 OR LESS PERSONS) TO ANOTHER FAMILY CARE HOME (6 OR LESS PERSONS) WHEN 1,320 FEET IS REQUIRED. PRESENT ZONING-RS-9, BS-106, CROSS STREET- SOUTH EUGENE STREET. (GRANTED)**

Mr. Ruska stated that Deborah King is the owner of the property located at 2 Woodlea Ridge Court. Shannon Hairston is the applicant requesting a Special Exception. The lot is located at the southeastern intersection of South Elm-Eugene Street and Woodlea Ridge Court on zoning map block sheet 106. The applicant is requesting a Special Exception as authorized by Section 30-5-2.37(B) to locate a proposed family care home (6 or less persons) 1,098 feet from an existing family care home (6 or less persons) instead of the required spacing of 1,320 feet. This location will not meet the spacing requirement by approximately 222 feet. The existing family care home is located at 3221 Edenwood Drive, which is located on the western side of South Elm-Eugene Street. The family care homes will be separated by a major thoroughfare and two other streets. Attached is a copy of an updated report for Board of Adjustment Special Exception requests for family care homes from January 1995 through February 28, 2005. The property is zoned RS-9. The adjacent properties located to the west, south, and on the western side of this portion of South Elm-Eugene Street are also zoned RS-9.

Sharon Hairston was sworn in and stated that she has signed a lease on this property and wishes to use it as a group home facility. The closest group home facility is within 1,098 feet, as the crow flies, but the houses are in separate neighborhoods and it is difficult to reach one house from the other because S.

Elm-Eugene Street is a major thoroughfare and separates the houses. She does not feel that anyone could easily determine that either of the houses are not being used as single family housing.

Chair Holston asked if there was anyone present wishing to speak in opposition to the request and no one came forward.

After some discussion Mr. Kee moved to incorporate the stated findings of fact and that the Zoning Enforcement Officer be overruled and the Special Exception granted based on the following: as the Special Exception is in harmony with the general purpose and intent of the ordinance and preserves its spirit, assures public safety and welfare and does substantial justice, because it is separated by a major thoroughfare and the travel and sight distance is sufficient to designate separation of the two group homes involved and will not promote a clustering of such facilities, seconded by Mr. Pinto. The Board voted 4-1 in favor of the motion. (Ayes: Buffington, Holston, Kee and Pinto, Nays: Cross.)

The absence of Ms. Wright was noted.

Mr. Ruska presented a Resolution of Appreciation for Ms. Joyce Lewis' service to the Board for their adoption.

* * * * *

There being no further business before the Board, the meeting was adjourned at 3:56 p.m.

Respectfully submitted,

Hugh Holston, Chair
Greensboro Board of Adjustment

HH/jd